

Amendments to the Environment Court Practice Note 2011

Acting Principal Environment Court Judge Newhook has issued an amended Environment Court Practice Note which comes into effect on 1 November 2011 and replaces all previous Practice Notes. Whilst the Practice Note is not a set of inflexible rules, it provides further clarification and guidance to all parties involved in Resource Management hearings of Court's practices and should be followed unless there is good reason to do otherwise.

The majority of the amendments to the Practice Note simply rephrase or refine the wording of the clauses without altering the original meaning of the clause. Amendments have also been made to clarify changes to the Resource Management Act 1991 as a result of the 2009 Amendment Act, for example amendments to take into account the Direct Referral process.

The main substantive additions, which are relevant to all persons involved in Resource Management hearings include:

Complex Track Management

Clause 2.6.1 has been amended to clarify that the complex track process applies to matters referred directly to the Court.

Case Management

Adjournments

Clause 2.11 has been amended to make it explicit that when a party seeks an adjournment after the notice of hearing has been issued, that any request to the Registrar should also simultaneously be advised to all other parties to the proceeding. Previously there was no requirement to simultaneously advise all other parties.

Exhibits

Clause 2.16 has been clarified to state that exhibits must be of "a scale sufficient to be clearly legible" and "aerial photos with, where relevant, contour lines endorsed are a useful exhibit". There is now no requirement for individual photographs to be mounted.

The clause also includes a requirement that "parties should confer, and, wherever possible, produce one set of agreed documents, photographs or other similar exhibits".

Alternative Dispute Resolution

Role of the Mediator

Clause 3.2.3.3 now includes a statement to make it clear to all parties that "in appropriate cases the mediator may set a timeline to ensure that further steps, such as the provision of further information, are completed in a timely and sequential way" after the mediation.

Representation at Mediation

Clause 3.2.4.3 now makes it explicit that where a party appoints a representative to attend mediation, the party will be taken to have given that representative full authority to settle the dispute or issues at stake unless notice is given not less than 7 days before the scheduled date.

Termination

Clause 3.2.10.1 now includes a statement that "a refusal to engage in mediation, or withdrawal from it, may influence the possible award of costs if the dispute goes to a hearing before the Court."

This clause is particularly relevant to parties' involved Court proceedings, as previously there was a presumption by the Court that no appellant should feel obliged to agree to mediation simply to avoid costs, however the inclusion of this clause implies that there may be costs awarded for failure to engage in mediation.

Clause 3.2.1.4 clarifies that the mediation may also be concluded "on agreement that no resolution short of a hearing is possible".

Costs

Clause 4.5.5 clarifies that any costs "application should include invoices or other proof of costs incurred", and that "all parties should note that costs incurred in the hearing before a Council or in Court-assisted mediation, are not awarded by the Court and should not be claimed."

Procedure at Appeal Hearings

Presentation of Evidence

Clause 4.3 (previously 4.3.1) has been amended to delete the reference to witnesses normally being required to read their statement of evidence aloud unless directed by the Court, thus implying a move towards the Court pre-reading evidence in advance of the hearing date.

Clause 4.3.1 has however been reworded to clarify that where matters of primary fact are in issue, the Court may require evidence in chief to be given viva voce, by question and answer.

Expert Witness – Code of Conduct

Duty to the Court

Clause 5.2.2 has been amended to clarify that expert witnesses "must not behave as" an advocate for any party who engages the witness, and that "expert witnesses must declare any relationship with the parties calling them or any interest they may have in the proceeding".

Expert Witness Conferencing

Clause 5.4.1 clarifies that, unless agreed by all parties or directed by the Court, persons not having such qualifications and experience will not participate in expert witness conferencing.

General Directions on Conferencing

Clause 5.6.1 directs that Joint Witness Statements should include identification of published standards or papers relied upon by the expert witnesses in coming to their opinions.

The amendments to the Practice Note aim to increase the efficiency of the hearing process through the streamlining of processes in advance of the hearing date.

It is important that all persons involved in Resource Management hearings are aware of the requirements in the 2011 Practice Note, as in some cases the amendments place additional requirements on the parties, for example in regards to mediation.

If you require further information regarding the 2011 Practice Note, please contact:



Philippa Walker, Partner

Phone: 03 335 1267

Mobile: 0274 444 258

philippa.walker@andersonlloyd.co.nz